

REMARKS

Claims 1-50 are pending in this application, and have been finally rejected in the first Office Action after a Request for RCE with amendments to the claims. Reconsideration of the rejections, as well as the finality of the present Office Action is respectfully requested.

It is first noted that the present Office Action was issued in response to Applicant's communication filed on July 22, 2008, which was an RCE with an accompanying amendment that amended the claims. In response to this amendment, the present Office Action was made final, even though the claims in the amendment of July 22, 2008 were newly amended, thus rendering some claims not drawn to a same claimed invention to those prior to entry of the amendment. Additionally, the present rejections rely upon art that was not previously of record for rejecting claims (i.e., Kwon et al.), as evinced by the inclusion of form PTO-892 with the present Office Action. In such case, MPEP §706.07(b) indicates that a final rejection is not appropriate. In particular, this section of the MPEP instructs that "claims of an application for which a request for continued examination (RCE) has been filed may be finally rejected in the action immediately subsequent to the filing of the RCE (with a submission and fee under 37 CFR 1.114) where all the claims in the application after the entry of the submission under 37 CFR 1.114 (A) are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114, and (B) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to the filing of the RCE under 37 CFR 1.114." As mentioned above, conditions (A) and (B) were not met after filing of the RCE and amendment on July 22, 2008.

Moreover, for first Office Action final rejections after an RCE, MPEP §706.07(b) also instructs that form paragraph 7.42.09 should be used to specifically indicate that conditions (A) and (B) discussed above were met. This form paragraph was not used in the present Office Action, but rather form paragraph 7.40 was used, which is for rejections upon a second or later Office Action indicating that the amendment after a first Office Action necessitated the final rejection (See MPEP 706.07(a)). This is simply not appropriate for a first Office Action final after an RCE, and prejudices the Applicant because the Applicant is being denied an opportunity to respond to the present rejections of a first Office Action citing new art not previously of

record without the threat of a final rejection. Accordingly, Applicants respectfully submit that the finality of the present Office Action was premature, and respectfully request that the finality of the rejections in the present Office Action be withdrawn.

Claims 1-6, 8, 12-14, 16, 17, 19, 23-28, 30, 34-36, 38, 39, 41, 45, 46, and 47-50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,219,374 to Kim *et al.* ("Kim") in view of U.S. Patent Publication No. 2002/0131522 to Felgentreff ("Felgentreff"), and newly cited U.S. Patent Publication 2008/0043683 to Kwon *et al.* ("Kwon"). Applicant respectfully traverses this rejection for the following reasons.

With regard to independent claims 1, 12, 23, 34 and 45-50, each of these claims contains claimed elements including "different portions of an initial data stream, each portion comprising an I/Q pair of modulated symbols and each portion being of a different quantity of modulated symbols." These elements are asserted as being taught by newly cited reference Kwon. In particular, Kwon is alleged to teach this claimed feature in figure 1 and the accompanying description in col. 3 of the reference. Kwon, however, does not teach or suggest this claimed element. The Walsh cover section 103 in figure 1 of Kwon is disclosed as being able to use different Walsh codes dependent on the subpacket length of the modulated symbols sent from a QPSK modulator 102. Walsh cover section 103 in Kwon, however, is not taught or suggested to cover "different portions of an initial data stream" as claimed, let alone "each portion being of a different quantity of modulated symbols." Merely because cover section 103 may be configured to use a respectively different mapped Walsh codes corresponding to subpacket length of a data stream, does not equate to a teaching by Kwon that includes covering different portions of the initial data stream where each portion comprises an I/Q pair of modulated symbols and being of a different quantity. Figure 1 of Kwon makes clear that the cover section 103 only covers the entirety or all portions of the data stream (with whatever Walsh code pertains to the subpacket length), not portions having respective I/Q pairs of modulated symbols and "each portion being of a different quantity of modulated symbols" as featured in the independent claims.

Moreover, as recognized in the Office Action, neither Kim nor Felgentreff teach the claimed element of "each portion being of a different quantity of modulated symbols. It is also noted that when combining Kwon with Felgentreff, for example, that merely because Felgentreff teaches dual modulators for generating a predistorted and frequency response compensated

signals (see FIG.3 of Felgentreff), simply adding the teachings of Kwon does not yield the claimed features discussed above. That is, Felgentreff does not teach or suggest single modulation of the initial data stream as featured in the present claims. Thus, to add Kwon to Felgentreff (or Kim for that matter), would still result in a transmitter where a whole, not portions, of the modulated data stream symbols for each modulator would be covered by Walsh covers as taught by Kwon, assuming for argument's sake that one skilled in the art would be actually be motivated to combine such disparate teachings. Accordingly, the cited art of record, whether combined or taken separately, fails to teach or suggest all of the elements of independent claims 1, 12, 23, 34 and 45-50, and the rejections of these claims should be withdrawn.

Since claims 2-6 and 8 depend from claim 1, claims 13, 14, 16, 17 and 19 depend from claim 12, claims 24-28 and 30 depend from claim 23, and claims 35, 36, 39 and 41 depend from claim 34, these claims are believed allowable at least due to their dependency, as well as on their own merits.

Claims 1-10, 23-32, 47 and 49 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0172264 to Wiberg *et al.* ("Wiberg") in view of Felgentreff and newly cited Kwon. Applicant respectfully traverses this rejection for the following reasons.

It is noted that the arguments presented above with respect to Kwon failing to teach all of the elements of the claims are pertinent to this rejection, also relying upon Kwon for the same elements. Accordingly, for at least the same reasons above, Applicant requests withdrawal of this rejection of claims 1-10, 23-32, 47 and 49 as the cited art fails to teach or suggest all of the elements of the rejected independent claims, as well as dependent claims.

Finally, claims 1-6, 8-10, 23-28, and 30-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2003/0035466 to Proctor Jr. *et al.* ("Proctor") in view of the newly cited reference Kwon. Applicant respectfully traverses this rejection for the following reasons.

It is noted that the arguments presented previously with respect to Kwon failing to teach all of the elements of the claims are pertinent to this rejection, also relying upon Kwon for the same elements. Accordingly, for at least the same reasons, Applicant requests withdrawal of this rejection

of claims 1-6, 8-10, 23-28, and 30-32 as the cited art fails to teach or suggest all of the elements of the rejected independent claims, as well as dependent claims.

CONCLUSION

In light of the foregoing remarks, Applicant submits that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: December 3, 2008

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